

NATIVE VILLAGE OF CIRCLE

IBLA 88-259

Decided May 24, 1990

Appeal from a decision of the Alaska Townsite Trustee rejecting appellant's application for conveyance of residual townsite lots.

Reversed.

1. Alaska: Townsites--Townsites

The regulation at 43 CFR 2565.7, governing conveyance of residual townsite lots which are unoccupied at the time of subdivisional survey, provides for conveyance to the municipality upon proof of incorporation. Application of this regulation to preclude conveyance to an unincorporated Native village has been held inconsistent with the Native Townsite Act and, hence, the regulation is not properly applied to Native townsites to bar conveyance to the Native village.

APPEARANCES: Michael J. Walleri, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Native Village of Circle has appealed from a decision of the townsite trustee, Alaska State Office, Bureau of Land Management (BLM), dated November 22, 1987, rejecting its applications for trustee deeds to four remaining lots in the Circle Townsite. The applications were rejected on the ground that the applicant is not an incorporated entity as required by the regulation at 43 CFR 2565.7. The decision indicated that the lots would continue to be held in trust by BLM until the village incorporates as a municipality under State law or until the trustee has authorization to transfer the land to an entity other than a municipal corporation.

Appellant, an unincorporated Native village, filed its applications for the trustee deeds on November 16, 1987. In support of its requests, appellant attached a copy of Resolution 87-09, dated September 11, 1987, entitled Close Out Plan For Circle Townsite. The Resolution asserted that the July 17, 1987, decision in Aleknagik Natives, Ltd. v. United States, No. A 77-200 Civil (D. Alaska), 1/ (Aleknagik Natives), in which the district court held that unincorporated Native villages are eligible to

1/ Affirmed, Aleknagik Natives Ltd. v. United States, 886 F.2d 237 (9th Cir. 1989).

receive townsite land, provided the basis for appellant's entitlement to the deeds to the lots in question.

By decision dated November 22, 1987, the townsite trustee rejected appellant's applications for deeds to the townsite lots. She indicated that the district court decision in Aleknagik Natives had been appealed by the Department of the Interior and stated that "no action will be taken until a final decision has been made" (Decision at 1). Nevertheless, the trustee determined that the lots in question were residual townsite lots because the improvements thereon had been insufficient to warrant a deed to an individual and/or had been constructed after the date of the subdivisional survey of the townsite. She noted that 43 CFR 2565.7 provides that "upon proof of incorporation of the town, all lots then remaining unsold will be deeded to the municipality." Because appellant is not incorporated as a municipality under State law, the trustee found that appellant was not qualified to receive title to the residual townsite lands. She stated that the lots would continue to be held by the trustee until appellant incorporated as a municipality under State law or until the trustee received authorization to transfer the land to an entity other than a municipality.

Appellant proffers two reasons for its appeal:

1. During the pending of the appeal of Aleknagik Natives Ltd. vs. United States, the original decision of the Court remains valid, and the existence of the appeal could only justify the holding of the applications in abeyance pending the outcome of the appeal, not rejection of the application[s], [and]
2. the decision was erroneously based upon 43 CFR 2565[.]7 and should have been based upon 43 CFR 2565.5(b) and 43 CFR 2564.0-4(b) and other authority allowing the grant of the application.

(Notice of Appeal and Statement of Reasons at 1). The decision of the district court in Aleknagik Natives has now been affirmed by the Ninth Circuit Court of Appeals. (See note 1, supra.) Accordingly, we find it necessary to reverse the decision of the trustee and remand this case for further proceedings.

Appellant sought the requested lots pursuant to section 11 of the Act of March 3, 1891, 43 U.S.C. § 732 (1970) (repealed by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2790 (1976), effective Oct. 21, 1976, subject to valid existing rights); section 3 of the Act of May 25, 1926, 43 U.S.C. § 735 (1970) (also repealed by section 703(a) of FLPMA); and the regulations promulgated thereunder. Section 11 of the Act of March 3, 1891, provided for the entry of lands in Alaska "for town-site purposes, for the several use and benefit of the occupants of such town sites" by a trustee appointed by the Secretary of the Interior and provided that, upon entry, the Secretary "shall provide

by regulation for the proper execution of the trust in favor of the inhabitants of the town site, including the survey of the land into lots." Section 3 of the Act of May 25, 1926, extended the provisions of section 11 of the Act of March 3, 1891, to Native townsites, subject to the same limitations and restrictions. See Bristol Bay Housing Authority, 95 IBLA 20, 22 (1986). The regulations promulgated by the Secretary to implement these Acts are found at 43 CFR Subparts 2564 and 2565.

[1] In both Native and non-Native townsites, lots are properly deeded by the trustee to those inhabitants who are occupants of such lots or are entitled to such occupancy at the date of approval of the final subdivisional townsite survey. 43 CFR 2565.3(c); City of Klawock v. Andrew, 24 IBLA 85, 83 I.D. 47 (1976), aff'd, City of Klawock v. Gustafson, Civ. No. K-74-2 (D. Alaska Nov. 11, 1976) (upholding applicability of regulation to Native townsites). With respect to lands not occupied as of the date of approval of the subdivisional survey, the regulation at 43 CFR 2565.7 provides in relevant part that "[a]fter the public sale and upon proof of incorporation of the town, all lots then remaining unsold will be deeded to the municipality." The question presented here concerns the ability of an unincorporated village to receive title to the residual townsite lots. This issue was the sole remaining issue before the district court in Aleknagik Natives. See Transcript, Hearing on Motion for Reconsideration, Aleknagik Natives, July 17, 1987, at 3-4. The district court concluded that townsite lands were not to remain in trust indefinitely, and thus unavailable for the inhabitants. Accordingly, the court ordered that the trustee convey the remaining townsite lands to the unincorporated villages. Id. at 15. This decision was affirmed on appeal. Aleknagik Natives Ltd. v. United States, supra. On appeal, the regulation limiting conveyance of residual townsite lands to a municipal corporation was found to be inconsistent with the purpose of the Native townsite statute and, hence, inapplicable to Native townsites. 886 F.2d at 240. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision appealed from is reversed and the case is remanded to the townsite trustee.

C. Randall Grant, Jr.
Administrative Judge

I concur:

David L. Hughes
Administrative Judge.

2/ In view of the disposition of this case we find it unnecessary to consider appellant's argument that 43 CFR 2565.5(b) and 43 CFR 2564.0-4(b) provide authority to grant appellant's applications.

